

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)
)
 PLAINTIFF,)
)
 VS.) CRIMINAL ACTION
) FILE NO. 1:13-CR-266-TCB
)
) ATLANTA, GEORGIA
 KEVIN HICKEY) MARCH 25, 2014
) 10:00 A.M.
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE TIMOTHY C. BATTEN, SR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: JILL STEINBERG
ASSISTANT U.S. ATTORNEY

FOR THE DEFENDANT: AKIL SECRET
ATTORNEY AT LAW

LORI BURGESS, OFFICIAL COURT REPORTER
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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY CAT.

1 THE COURT: GOOD MORNING. MR. HICKEY, HAVE YOU
2 READ THE PRESENTENCE REPORT?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: WE HAVE BUT ONE OBJECTION TO THE
5 REPORT, AND IT'S APPLICATION OF THE SPECIFIC OFFENSE
6 CHARACTERISTICS. WE START WITH A BASE OFFENSE LEVEL OF 22,
7 AND THEN WE INCREASE THAT BY TWO LEVELS BECAUSE THE MATERIAL
8 INVOLVED A PREPUBESCENT MINOR OR A MINOR WHO HAD NOT
9 OBTAINED THE AGE OF 12 YEARS. AND THIS OBJECTION NOW IS
10 WITH RESPECT TO PARAGRAPH 24 OF THE PSR, WHICH RAISES THE
11 ISSUE OF WHETHER WE SHOULD INCLUDE THE OFFENSE LEVEL BY FIVE
12 MORE LEVELS BECAUSE THE OFFENSE INVOLVED DISTRIBUTION FOR
13 THE RECEIPT OR EXPECTATION OF RECEIPT OF A THING OF VALUE.

14 THE DEFENDANT CONTENDS THAT HE DID NOT SHARE
15 IMAGES WITH ANYONE ELSE WITH AN AGREEMENT TO RECEIVE
16 ANYTHING OF VALUE IN RETURN. SO I WOULD LIKE TO HEAR THE
17 GOVERNMENT'S RESPONSE TO THAT.

18 MS. STEINBERG: YES, YOUR HONOR. I DON'T THINK
19 ANYONE IS CONTESTING THAT IF MR. HICKEY DID IN FACT TRADE
20 WITH ANOTHER PERSON THEN THAT WOULD CONSTITUTE RECEIVING
21 SOMETHING OF VALUE. CHILD PORNOGRAPHY IS SOMETHING OF VALUE
22 THAT HE WOULD HAVE IN FACT RECEIVED. THE ACTIVITY IN JUNE
23 OF 2013 REFLECTS THE DEFENDANT ACTUALLY DISTRIBUTING JUST
24 GENERALLY TO THE CONFIDENTIAL SOURCE. SO THE QUESTION IS
25 WHETHER OR NOT HE HAD AN EXPECTATION HE WOULD GET SOMETHING

1 IN RETURN. CERTAINLY THAT IS SOMETHING THE COURT COULD
2 INFER, BUT IT DOESN'T EVEN NEED TO DO THAT BECAUSE, IF THE
3 COURT LOOKS AT THE FACTUAL STATEMENTS IN PARAGRAPHS NO. 18
4 AND 19, WHICH ARE NOT DISPUTED, IT TALKS ABOUT TWO OTHER
5 INSTANCES IN WHICH THE DEFENDANT WAS TRADING WITH
6 INDIVIDUALS.

7 PARAGRAPH 18 TALKS ABOUT THE DEFENDANT TRADING
8 WITH SOMEONE BY THE NAME OF NATE, WHERE NATE CAME OVER TO
9 THE DEFENDANT'S HOUSE AND LOOKED AT CHILD PORNOGRAPHY AND
10 LEFT A HARD DRIVE THERE THAT CONTAINED CHILD PORNOGRAPHY
11 THERE ON IT. THAT IS AN EXCHANGE.

12 AND EVEN IF THE COURT WERE NOT TO CHARACTERIZE
13 THAT AS TRADING CHILD PORNOGRAPHY, SOMEONE COMING OVER AND
14 LOOKING AT THE DEFENDANT'S PORNOGRAPHY, LEAVING SOMETHING
15 FOR THE DEFENDANT, IT IS STATED VERY DIRECTLY IN PARAGRAPH
16 NO. 19 WHICH RELATES TO AN INDIVIDUAL THAT THE DEFENDANT
17 KNEW AS ALAN FRANCO, AND THE DEFENDANT INDICATED THAT HE
18 TRADED CHILD PORNOGRAPHY WITH THAT INDIVIDUAL.

19 SO THERE ARE THREE SEPARATE OCCASIONS IN WHICH THE
20 COURT COULD BASE THE FIVE-LEVEL ENHANCEMENT, THE MOST
21 OBVIOUS ONE IS REALLY CHARACTERIZED IN PARAGRAPH 19. I
22 THINK 18 FITS THE BILL PRETTY CLEARLY AS WELL. AND FOR THAT
23 REASON, I THINK THE FIVE-LEVEL ENHANCEMENT IS APPROPRIATE.
24 AT THE VERY LEAST, IT WOULD NEED TO BE A TWO-LEVEL
25 ENHANCEMENT FOR DISTRIBUTION.

1 THE COURT: ALL RIGHT, MR. SECRET, WHY IS SHE NOT
2 CORRECT?

3 MR. SECRET: YOUR HONOR, I BELIEVE THAT BOTH THE
4 GUIDELINE AND THE CASE LAW INDICATES NOT ONLY THAT TRADING
5 OR THE EXCHANGING OF CHILD PORNOGRAPHY IN AND OF ITSELF IS
6 NOT SUFFICIENT. IN THE GENERAL CHILD PORNOGRAPHY COMMUNITY,
7 I THINK THIS IS POINTED OUT IN SOME OF THE CASES, THERE ARE
8 THESE IMAGES THAT ARE GOING BACK AND FORTH. BUT I THINK
9 THAT THERE HAS TO BE SOME SPECIFIC INTENT ON HIS PART TO
10 TRADE WITH THE EXPECTATION THAT HE IS GOING TO GET SOMETHING
11 IN RETURN. I THINK THAT'S WHAT THE DIFFERENCE IS HERE.

12 THE COURT: WHY ISN'T THAT NOT READILY INFERRED
13 FROM PARAGRAPHS 18 AND 19?

14 MR. SECRET: I DON'T THINK IT IS INFERRED FROM THE
15 EVIDENCE. I WHAT IS INFERRED FROM THE EVIDENCE IS THAT
16 THERE WAS PORNOGRAPHY GIVEN AND THERE WAS PORNOGRAPHY
17 RECEIVED BY SOMEONE ELSE, BUT THERE IS NEVER AN INFERENCE
18 THAT I SEE THAT THIS IS DONE FOR THE SPECIFIC PURPOSE OF
19 THAT.

20 LET ME GIVE THIS EXAMPLE: ONE OF THE THINGS IN
21 ONE OF THE OTHER SECTIONS OF THE GUIDELINES IS IF YOU
22 RECEIVE SOME MONETARY, SOME PECUNIARY VALUE, I AM SELLING
23 THIS, SOMEBODY COMES TO MY HOUSE, THEY PUT MONEY ON THE
24 TABLE, AND THEN IN EXCHANGE FOR THAT I GIVE THEM CHILD
25 PORNOGRAPHY. AND IN THIS INSTANCE, IN THE CHILD PORNOGRAPHY

1 COMMUNITY, I THINK IT'S INFERRED ONLY THAT CHILD PORNOGRAPHY
2 IS EXCHANGED. NOT NECESSARILY BARTERING, NOT FOR THAT
3 PURPOSE. IN SOME INSTANCES HE GAVE IT TO THE INFORMANT
4 WITHOUT RECEIVING ANYTHING IN RETURN ON A COUPLE OF
5 OCCASIONS.

6 I THINK YOU COULD INFER THAT, JUDGE, BUT I DON'T
7 THINK IT IS A NATURAL CONSEQUENCE OF THE FACTS OF THIS CASE.
8 SOMEONE CAME TO HIS HOUSE, HE HAD CHILD PORNOGRAPHY, THEY
9 BROUGHT HIM SOME, HE GAVE THEM SOME. BUT NOT WITH THE --
10 HERE IS WHAT I AM SAYING TO THE COURT. I THINK THE QUESTION
11 IS WHETHER OR NOT BUT FOR THIS OTHER INDIVIDUAL GIVING HIM
12 THAT PORNOGRAPHY, THAT HE WOULD NOT HAVE GIVEN HIM WHAT HE
13 HAD TO DISTRIBUTE. AND I DON'T THINK THERE IS ANY INFERENCE
14 IN THE CASE ABOUT THAT.

15 THE COURT: I DON'T THINK IT IS A BUT FOR TEST. I
16 THINK IT'S SIMPLY DID HE DO IT WITH AN EXPECTATION OF
17 GETTING PORNOGRAPHY IN EXCHANGE. AND I THINK THAT HE DID.
18 I THINK THE EVIDENCE SHOWS THAT THE GOVERNMENT HAS CARRIED
19 ITS BURDEN OF SHOWING BY A PREPONDERANCE OF THE EVIDENCE
20 THAT THAT SPECIFIC OFFENSE CHARACTERISTIC APPLIES, SO I AM
21 GOING TO OVERRULE THE DEFENDANT'S OBJECTION.

22 MR. SECRET: ALL RIGHT.

23 THE COURT: WITH THAT, WE ADD FIVE LEVELS WHICH
24 BRINGS US TO 29. AND THEN WE INCREASE BY FOUR LEVELS
25 BECAUSE THE OFFENSE INVOLVED MATERIAL THAT PORTRAYED

1 SADISTIC OR MASOCHISTIC CONDUCT OR OTHER DEPICTIONS OF
2 VIOLENCE, THAT BRINGS US TO 33. AND THEN TWO LEVELS ARE
3 ADDED BECAUSE THE OFFENSE INVOLVED THE USE OF A COMPUTER.
4 THAT BRINGS US TO 35. AND THEN FIVE LEVELS ARE ADDED
5 BECAUSE THE OFFENSE INVOLVED 600 OR MORE IMAGES. THAT
6 BRINGS US TO 40. THE DEFENDANT HAS ACCEPTED RESPONSIBILITY
7 AND THEREFORE GETS A THREE-LEVEL REDUCTION, AND IT PUTS HIM
8 AT 37.

9 HE IS IN CRIMINAL HISTORY CATEGORY 1, AND A PERSON
10 IN CRIMINAL HISTORY CATEGORY 1 AND OFFENSE LEVEL OVER 37 HAS
11 A CUSTODY GUIDELINE RANGE OF 210 TO 262 MONTHS, AND A FINE
12 GUIDELINE RANGE OF 20,000 TO \$200,000. COUNSEL, BASED ON MY
13 RULING TODAY, AND WITHOUT HAVING YET ADDRESSED THE
14 GOVERNMENT'S MOTION FOR A SENTENCING REDUCTION, DO YOU AGREE
15 THAT THE COURT HAS CORRECTLY COMPUTED THE GUIDELINE RANGES
16 IN THIS CASE?

17 MR. SECRET: BASED UPON YOUR RULING, YES JUDGE.

18 MS. STEINBERG: YES, SIR.

19 THE COURT: OKAY. NOW, WE TURN TO THE
20 GOVERNMENT'S MOTION FOR A SENTENCE REDUCTION PURSUANT TO
21 SECTION 5 K 1.1 OF THE GUIDELINES. THE GOVERNMENT'S ASKING
22 FOR A THREE-LEVEL REDUCTION. I HAVE READ THE GOVERNMENT'S
23 MOTION, AND I AM SATISFIED THAT MR. HICKEY HAS PROVIDED
24 SUBSTANTIAL ASSISTANCE INDEED TO THE GOVERNMENT. THAT
25 MERITS THIS TYPE OF A DEPARTURE, AND THEREFORE I AM GOING TO

1 GRANT THE MOTION. AND SO IF WE GRANT THE MOTION, THE
2 DEFENDANT WILL GO FROM AN OFFENSE LEVEL OF 37 TO AN OFFENSE
3 LEVEL OF 34. AND BEING IN CATEGORY 1 THAT REDUCES HIS
4 CUSTODY GUIDELINE RANGE TO 151 TO 188 MONTHS, AND HIS FINE
5 GUIDELINE RANGE FROM \$17,500 TO \$175,000. AM I CORRECT
6 ABOUT THAT, COUNSEL?

7 MR. SECRET: YES, YOUR HONOR.

8 MS. STEINBERG: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. I WILL HEAR FROM THE
10 GOVERNMENT AS TO WHAT THE SENTENCE SHOULD BE.

11 MS. STEINBERG: YOUR HONOR, AS INDICATED AT THE
12 CONCLUSION OF THE GOVERNMENT'S 5 K MOTION, THE GOVERNMENT
13 ANTICIPATED AT THAT TIME, AND IT WILL IN FACT RESULT TODAY
14 IN A VARIANCE BELOW THE GUIDELINE RANGE THAT RESULTS FROM
15 THE 34 CRIMINAL HISTORY CATEGORY 1 CALCULATION THAT THE
16 COURT JUST MADE OF 151 TO 188 MONTHS.

17 THE REASON FOR THAT IS, TO A CERTAIN EXTENT,
18 DISCUSSED IN MR. SECRET'S SENTENCING MEMORANDUM ABOUT THE
19 WAY THE GUIDELINES FUNCTION AND THE CURRENT GUIDELINES'S
20 ABILITY DISTINGUISH DEFENDANTS FROM ONE ANOTHER IN THESE
21 TYPE OF CASES. THAT IS NOT THE SAY THAT ALL OF THE
22 ENHANCEMENTS ARE INVALID OR THEY ARE INVALID IN SOME
23 CIRCUMSTANCES AND NOT IN OTHERS, BUT I THINK THE JUSTICE
24 DEPARTMENT AND OUR OFFICE HAS AGREED FOR SOME TIME THAT THE
25 GUIDELINES DON'T DO A GREAT JOB OF DISTINGUISHING PEOPLE IN

1 THESE TYPE OF CATEGORIES.

2 MR. HICKEY IS SOMEBODY WHO IS ATYPICAL IN CERTAIN
3 REGARDS AND TYPICAL IN OTHER RESPECTS WHEN IT COMES TO THESE
4 TYPE OF OFFENDERS. AND IN LOOKING AT ALL OF THE THINGS THAT
5 RELATE TO HIS PARTICULAR CASE, AND AN HIM AS AN INDIVIDUAL,
6 IT IS OUR JUDGMENT THAT A REASONABLE SENTENCE IS 120 MONTHS,
7 WHICH IS BELOW THE 151 MONTHS. THERE ARE A COUPLE OF
8 DIFFERENT REASONS FOR THAT.

9 ON THE POSITIVE SIDE FOR MR. HICKEY IS -- THERE
10 OBVIOUSLY IS A REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY.
11 THAT IS SOMETHING THAT THIS COURT TYPICALLY FINDS IN GUILTY
12 PLEA TYPE OF SCENARIOS. MR. HICKEY, I WOULD SAY, WENT
13 ALMOST ABOVE AND BEYOND THAT. HE IMMEDIATELY ACCEPTED
14 RESPONSIBILITY FOR WHAT HE DID. THE DAY THAT THE SEARCH
15 WARRANT WAS EXECUTED AND EVERY MOMENT SINCE THEN HAS
16 COOPERATED WITH THE GOVERNMENT. AND THAT IS SOMETHING THAT
17 IS REFLECTED IN THE 5 K MOTION, IT IS REFLECTED IN THE
18 ACCEPTANCE PART, BUT EVEN BEYOND PEOPLE WHO FALL INTO THOSE
19 BUCKETS, I THINK MR. HICKEY'S ACCEPTANCE AND COOPERATION
20 WITH THE GOVERNMENT IS BEYOND WHAT WE EVEN SEE IN THE NORM.

21 HE HAS REPEATEDLY OFFERED TO BE OF GREATER
22 ASSISTANCE TO THE GOVERNMENT TO THE EXTENT THAT WE WOULD
23 NEED THAT, AND THAT MIGHT VERY WELL HAPPEN IN THE FUTURE, WE
24 WILL SEE. BUT THAT IS SOMETHING THAT STICKS OUT ABOUT
25 MR. HICKEY.

1 ON THE NEGATIVE SIDE OF IT, MR. HICKEY IS SOMEBODY
2 WHO OVER TIME HAS SHOWN EXTREMELY POOR JUDGMENT IN TERMS OF
3 HOW TO DEAL WITH OBVIOUSLY AN INAPPROPRIATE SEXUAL INTEREST
4 TOWARDS CHILDREN AND HOW IT IS HE GOES ABOUT LIVING HIS
5 LIFE. HE WAS A TEACHER IN HIGH SCHOOL, HE WAS A YOUTH
6 DIRECTOR IN A CATHOLIC CHURCH. HE THEN JOINED THIS
7 ORGANIZATION LIFE TEAM WHERE HE HAD SOME CONTACT WITH
8 CHILDREN AND WAS DOING PARISH OUTREACH.

9 THIS IS NOT SOMETHING COMPATIBLE WITH THE ISSUES
10 MR. HICKEY IS DEALING WITH. IT IS SORT OF REPEATEDLY
11 EXPOSING HIMSELF TO SOMETHING THAT IS KIND OF A TOXIC
12 ENVIRONMENT FOR HIM, IT SHOWS BAD JUDGEMENT ON HIS PART.

13 HE ALSO HAS A PRIOR, I DON'T KNOW IF IT'S A
14 CONVICTION, BUT INTERACTION WITH LAW ENFORCEMENT FOR PUBLIC
15 LEWDNESS WHICH DEMONSTRATES AGAIN SORT OF A LACK OF JUDGMENT
16 AND INABILITY TO CONTROL SOME OF THESE BEHAVIORS THAT NEED
17 TO BE CORRECTED.

18 HE IS AN ACTIVE DISTRIBUTOR OF CHILD PORNOGRAPHY.
19 WE HAVE INDIVIDUALS WHO ARE HERE IN PEER-TO-PEER TYPE CASES
20 WHO IT IS MORE OF A PASSIVE ACTIVITY. THIS IS SOMEONE WHO
21 HAS TAKEN THAT STEP OF ACTUALLY GOING OUT AN INTERACTING
22 WITH OTHER PEOPLE WITH SIMILAR INTERESTS, AND ACTIVELY
23 TRADING CHILD PORNOGRAPHY, AND THAT IS SOMETHING THAT I KNOW
24 MR. SECRET TALKS ABOUT THE GUIDELINES AND HOW THEY SORT OF
25 DECONSTRUCTED AND INDICTED BY VARIOUS PARTIES, ONE OF THE

1 THINGS THAT MOST OF THE STAKEHOLDERS AGREE ON IS THAT WHEN
2 SOMEONE REACHES THE LEVEL OVER MR. HICKEY, BEING THEY ARE
3 ACTIVE DISTRIBUTORS, THEY ARE INTERACTING WITH PEOPLE OF
4 LIKE MINDS, THAT TAKES THEM OUT OF THE REALM OF THE PERSON
5 SITTING IN THEIR MOTHER'S BASEMENT, YOU KNOW. THEY HAVE
6 TAKEN THAT EXTRA STEP.

7 MR. HICKEY HAS TAKEN THAT EXTRA STEP. IT PUTS HIM
8 ACTUALLY IN AN ENHANCED KIND OF CATEGORY. SO ALTHOUGH SOME
9 OF THE INDICTMENT OF THE GUIDELINES, SOME OF THE THINGS THAT
10 MR. SECRET IS TALKING ABOUT ARE TRUE, A LOT OF THAT STUFF
11 DOES NOT GO TO SOMEBODY WHO IS IN HIS CLIENT'S POSITION.
12 BECAUSE THE GUIDELINES IN SOME WAYS DON'T DEAL WELL WITH
13 THESE KIND OF OFFENDERS, BUT THEY ALSO DON'T DEAL WELL WITH
14 OFFENDERS WHO HAVE TAKEN THAT EXTRA STEP BECAUSE THEY DON'T
15 DISTINGUISH PEOPLE WHO ARE NECESSARILY EMAILING AND TEXTING
16 AND MEETING IN PERSON WITH PEOPLE OF LIKE MINDS AND DOING
17 THIS KIND OF ACTIVE TRADING.

18 THE GUIDELINES DON'T DEAL WITH SOMEONE LIKE
19 MR. HICKEY WHO GOES OUT IN PUBLIC IN THE ATLANTA METRO AREA
20 AND IS TAKING PICTURES OF CHILDREN AND THEN SENDING THEM TO
21 OTHER PEOPLE. THE GUIDELINES DON'T TALK ABOUT THAT. SO THE
22 GUIDELINES DON'T ALWAYS GO A GREAT JOB, BUT IT DOESN'T
23 NECESSARILY HELP HIM IN THIS CASE.

24 NEVERTHELESS, IT'S OUR POSITION THAT A GUIDELINE
25 SENTENCE MIGHT STILL BE SLIGHTLY ABOVE WHAT REASONABLE

1 SENTENCES IN MR. HICKEY'S CASE, AND FOR THAT REASON WE STILL
2 THINK IS A SUBSTANTIAL SENTENCE IS WARRANTED FOR THE REASONS
3 THAT I JUST DISCUSSED, AND THAT WOULD BE THE SENTENCE OF 120
4 MONTHS, AND A PERIOD OF SUPERVISED RELEASE OF AT LEAST 20
5 YEARS FOLLOWING THAT.

6 THERE IS ALSO A RESTITUTION REQUEST THAT HAS BEEN
7 MADE BY ONE OF THE VICTIMS IN THE J_BLODGE SERIES. I HAVE
8 SPOKEN TO THE LAWYER WHO REPRESENTS THE J_BLODGE SERIES AND
9 MR. SECRET, AND WE HAVE COME TO AN AGREEMENT FOR \$1,000. SO
10 I WOULD ASK THAT THE \$1,000 RESTITUTION AMOUNT BE INCLUDED
11 IN THE JUDGMENT.

12 THE COURT: ALL RIGHT. MR. SECRET?

13 MR. SECRET: YOUR HONOR, MAY IT PLEASE THE COURT,
14 I KNOW THAT YOU ARE FAMILIAR WITH THIS ARGUMENT. IN FACT, I
15 THINK IT WAS BRIAN MENDELSON WHO PRESENTED THIS ARGUMENT TO
16 YOUR HONOR PROBABLY SOMETIME IN THE BEGINNING OF THE YEAR,
17 AND I GUESS I LOOKED AT YOUR HONOR'S RULING IN THAT MATTER,
18 SO --

19 THE COURT: I DON'T KNOW IF IT WAS REFLECTED IN
20 THE TRANSCRIPT OR IN WHATEVER YOU LOOKED AT, BUT I THINK IT
21 IS A VERY COGENT ARGUMENT. IT DOESN'T CARRY THE WATER FOR
22 ME IN EVERY RESPECT, BUT IT IS A WORTHWHILE ARGUMENT.

23 MR. SECRET: AND I JUST WANTED TO HIGHLIGHT JUST A
24 COUPLE OF THINGS ABOUT THAT ARGUMENT, YOUR HONOR. IT RAISES
25 THE QUESTION OF WHETHER OR NOT THE AVERAGE DEFENDANT SHOULD

1 ALWAYS BE VARIED NEAR THE TOP OF THE GUIDELINES. NOW, OF
2 COURSE WE ARE TALKING ABOUT 3553, AND I REALIZE WHAT THE
3 GOVERNMENT'S RECOMMENDATION IS, AND I AM CERTAIN MR. HICKEY
4 APPRECIATES THAT.

5 BUT OTHER THAN THEIR VARIANCE THAT THEY ARE
6 SUGGESTING, THE GUIDELINES AS STATED, GENERALLY PUT, MOST
7 PEOPLE IN MR. HICKEY'S SITUATION AT THE MAXIMUM LEVEL, AND
8 THE QUESTION BECOMES WHETHER OR NOT THAT IS REASONABLE. THE
9 LACK OF EMPIRICAL DATA THAT THE SENTENCE COMMISSION HAS USED
10 TO ARRIVE AT THIS, IT SEEMS TO HAVE BEEN RATHER IMPOSED SORT
11 OF EXTERNALLY BY STATUTE.

12 BUT LATELY THE SENTENCING COMMISSION HAS CONFIRMED
13 THAT WILL HAS BEEN A LACK OF EMPIRICAL DATA, AND THAT THEY
14 EVEN NOW SUGGEST THAT THERE BE SOME CHANGES IN THE
15 SENTENCING GUIDELINES.

16 AND THEN THERE IS THE COMPUTER ENHANCEMENT, WHICH
17 ALWAYS SEEMS TO BE NOT A GIVEN IN CHILD PORNOGRAPHY CASES,
18 BECAUSE THAT IS THE I WOULD SAY, IN PROBABLY 99 PERCENT OF
19 THE CASES, THE MANNER IN WHICH --

20 THE COURT: IS IT THAT LOW?

21 MR. SECRET: -- IN WHICH ALL CHILD PORNOGRAPHY IS
22 TRANSMITTED. AND THEN, YOU KNOW, THAT OBVIOUSLY THAT FORM
23 OF TRANSMISSION MAKES IT SO EASY TO TRANSMIT A NUMBER OF
24 DOCUMENTS WITHIN A VERY SHORT PERIOD OF TIME

25 THE COURT: THE PROBLEM YOUR GUY HAS IS

1 DISTRIBUTION.

2 MR. SECRET: I UNDERSTAND. SO THERE IS AN
3 EMERGING CONSENSUS, AND I THINK THERE IS A CASE WHERE THE
4 11TH CIRCUIT TALKS ABOUT THAT, A CASE THAT THEY DECIDED
5 WHERE THEY WERE SORT OF GOING AGAINST THE -- WELL, I THINK
6 THE QUESTION IS TO WHAT LEVEL THIS -- LET ME SEE WHAT I'VE
7 GOT HERE -- WHETHER OR NOT THE DISPARITIES IN THIS CASE
8 ARISE TO THE *KIMBREL* LEVEL.

9 AND AT THAT POINT, WHEN THE 11TH CIRCUIT MADE THIS
10 DECISION, AND I THINK IT WAS IN THE *PEW* CASE, THE SENTENCING
11 COMMISSION HAD NOT SPOKEN ON IT, BUT THAT IS NO LONGER THE
12 CASE. THE SENTENCING COMMISSION HAS SPOKEN ON THE CASE AND
13 THERE HAVE BEEN HEARINGS AND FINDINGS BY THE COMMISSION THAT
14 THEY BELIEVE THERE IS A DISPARITY IN SENTENCING WITH RESPECT
15 TO CHILD PORNOGRAPHY.

16 I AM ASKING THE COURT IN THIS CASE TO, BASED UPON
17 HIS HISTORY, I THINK THE COURT HAS SOME LETTERS OF REFERENCE
18 FOR HIM. HE HAS ALWAYS BEEN GAINFULLY EMPLOYED. OBVIOUSLY
19 ON THE TERMS AND CONDITIONS OF THE COURT'S SUPERVISED
20 RELEASE, THE COURT CAN CERTAINLY DICTATE THE KIND OF
21 EMPLOYMENT THAT HE CAN AND CANNOT HAVE, CAN CERTAINLY ASSIST
22 HIM WITH STRUCTURE AND GUIDE HIM IN THE DIRECTION WHERE THE
23 KIND OF CONCERNS THAT THE GOVERNMENT HAS WITH RESPECT TO HIS
24 JUDGMENT, HE DOESN'T HAVE ANY CHOICE OR FLEXIBILITY IN THAT
25 MATTER.

1 I'VE ASKED THE COURT FOR A SENTENCING OF 60
2 MONTHS. I THINK THE GOVERNMENT HAS ASKED FOR 120 MONTHS. I
3 THINK A SENTENCE SOMEWHERE IN THE MIDDLE RANGE. THE 160
4 MONTHS I BELIEVE IS THE HIGH END OF A LEVEL 32, AND I WOULD
5 ASK THE COURT TO CONSIDER THE HIGH END OF A LEVEL 30, WHICH
6 WOULD BE I BELIEVE A 97 MONTHS IN THIS CASE AS A SENTENCE IN
7 THIS CASE.

8 THE COURT: ALL RIGHT. DOES YOUR CLIENT WISH TO
9 MAKE A STATEMENT?

10 MR. SECRET: YES, JUDGE. HE DOES.

11 THE COURT: THAT IS FINE. RIGHT THERE IS FINE.

12 THE DEFENDANT: THANK YOU FOR LETTING ME HAVE AN
13 OPPORTUNITY. AND I DO WANT TO FIRST START BY JUST
14 APOLOGIZING TO THE COURT, TO YOU, TO THE U.S. ATTORNEY FOR
15 MY ACTIONS. I DO ACCEPT RESPONSIBILITY FOR WHAT I'VE DONE
16 AND ACKNOWLEDGE. YOU KNOW, IT WAS WRONG. I ACKNOWLEDGE
17 THAT. I APOLOGIZE TO THE COMMUNITY, WHETHER IT BE THE CITY
18 OF ATLANTA OR THE GREATER COMMUNITY, YOU KNOW, THAT WE ARE
19 IN THE WORLD NOW. IT IS JUST EVERYBODY IS SO CONNECTED.

20 AND I APOLOGIZE TO THE FAMILIES AND THE INNOCENT
21 VICTIMS OF THE CHILD PORNOGRAPHY. THOSE CHILDREN WHO ARE --
22 THEY ARE VICTIMS. AND SO I APOLOGIZE TO THEM. AND IN THAT
23 RESTITUTION, THAT WAY OF -- AN OUTWARD EXPRESSION OF THAT AS
24 WELL, OF SHOWING MY ACKNOWLEDGEMENT THAT IT'S NOT JUST ABOUT
25 SAYING I AM SORRY, BUT THAT THERE HAS TO BE A CHANGE IN

1 BEHAVIOR, THERE HAS TO BE A CHANGE IN LIFESTYLE. IT
2 CAN'T -- THINGS CAN'T JUST STAY THE SAME.

3 AND I WOULD ALSO LIKE TO PUBLICLY APOLOGIZE TO MY
4 FAMILY FOR THE STRAIN AND THE STRESS THAT IT'S PUT ON THEM.
5 AND TO ACKNOWLEDGE -- I HAVE AMAZING FRIENDS AND FAMILY WHO
6 HAVE BEEN SUPPORTIVE AND WILL CONTINUE TO SUPPORT ME THROUGH
7 INCARCERATION, THROUGH SUPERVISED RELEASE, ALL OF THOSE TYPE
8 OF THINGS. I WILL RELY UPON MY FAMILY, MY FAITH COMMUNITY,
9 AND ALL OF THAT TO CHANGE BEHAVIOR.

10 AGAIN, I BELIEVE IT'S NOT JUST ABOUT SAYING I AM
11 SORRY AND THEN NOT CHANGING ANYTHING. SOMETHING HAS TO
12 CHANGE, AND I AM WILLING TO MAKE THOSE CHANGES. I FEEL I
13 HAVE, LIKE I SAID, A FAMILIAL AND A COMMUNITY, FAITH
14 COMMUNITY, SUPPORT SYSTEM THAT WILL HELP ME MAKE THOSE
15 NECESSARY CHANGES AND TO CONTINUE TO LIVE OUT, YOU KNOW,
16 HOPEFULLY THE REST OF MY DAYS IN A WAY THAT WILL SHOW THAT,
17 YOU KNOW, ACCEPTING THAT RESPONSIBILITY AND THEN DOING WHAT
18 IS NECESSARY TO NOT GET INVOLVED IN THOSE BEHAVIORS AGAIN.

19 I DO DESIRE TO BE A PRODUCTIVE AND CONTRIBUTING
20 MEMBER OF SOCIETY. I DON'T FEEL, YOU KNOW, I WILL HAVE TO
21 RELY UPON JUST WHOA IS ME TYPE OF ATTITUDE, BUT THAT FROM
22 HERE ON OUT, AGAIN, MAKING THOSE NECESSARY CHANGES, WHETHER
23 IT BE THROUGH EDUCATION THAT I NEED TO GO THROUGH,
24 COUNSELING AND SO ON AND SO FORTH, TO DO WHAT IS NECESSARY
25 TO CHANGE.

1 THE COURT: ALL RIGHT.

2 THE DEFENDANT: THANK YOU.

3 THE COURT: THANK YOU. KEVIN, I SEE IN THE
4 SENTENCING RECOMMENDATION IT INDICATES A \$10,000 RESTITUTION
5 PAYMENT. IS IT 10,000 OR 1,000?

6 THE PROBATION OFFICER: 10,000 WAS WHAT THE VICTIM
7 WAS ORIGINALLY ASKING FOR, BUT MY UNDERSTANDING IS THAT
8 MS. STEINBERG HAS SPOKEN TO THE ATTORNEY AND --

9 THE COURT: ESSENTIALLY IT'S BEEN RENEGOTIATED?
10 ALL RIGHT.

11 THE PROBATION OFFICER: THAT WAS BEFORE THAT WAS
12 NEGOTIATED.

13 THE COURT: ALL RIGHT. THANK YOU. PURSUANT TO
14 THE SENTENCING REFORM ACT OF 1984 IT IS THE JUDGMENT OF THE
15 COURT THAT YOU THE GOVERNMENT HAS THE POSITION CORRECT. I
16 THINK 120 MONTHS IS APPROPRIATE. AND THAT IS GOING TO BE
17 THE SENTENCE FOR THE DEFENDANT TO BE COMMITTED TO THE
18 CUSTODY OF THE BUREAU OF PRISONS FOR THAT MATERIAL. HE
19 SHALL PAY A SPECIAL ASSESSMENT OF \$100, AND THE COURT WILL
20 WAIVE THE FINE AND COST OF INCARCERATION.

21 THE DEFENDANT IS ORDERED TO MAKE A RESTITUTION
22 PAYMENT TO CAPITAL J UNDERSCORE LOWER CASE B-L-O-N-D-E IN
23 THE AMOUNT OF \$10,000. THE DEFENDANT SHALL MAKE RESTITUTION
24 PAYMENTS FROM ANY WAGES HE MAY EARN IN PRISON, AND ANY
25 PORTION OF THE RESTITUTION THAT IS NOT PAID IN FULL AT THE

1 TIME OF HIS RELEASE FROM IMPRISONMENT SHALL BECOME A
2 CONDITION OF SUPERVISION AND BE PAID AT THE MONTHLY RATE OF
3 AT LEAST \$150 DOLLARS PLUS 25 PERCENT OF THE DEFENDANT'S
4 GROSS INCOME IN EXCESS OF \$2300 PER MONTH.

5 I WILL PLACE THE DEFENDANT ON SUPERVISED RELEASE
6 FOR THE REMAINDER OF HIS LIFE. HE IS TO REPORT TO THE
7 PROBATION OFFICE WITHIN 72 HOURS OF HIS RELEASE, AND WHILE
8 ON SUPERVISED RELEASE HE SHALL NOT COMMIT ANOTHER CRIME, AND
9 SHALL COMPLY WITH THE STANDARD CONDITIONS OF SUPERVISION AND
10 THE FOLLOWING SPECIAL CONDITIONS:

11 HE SHALL SUBMIT TO ONE DRUG URINALYSIS WITHIN 15
12 DAYS OF BEING PLACED ON SUPERVISION, AND AT LEAST TWO
13 PERIODIC TESTS THEREAFTER. HE SHALL COOPERATE IN THE
14 COLLECTION OF DNA AS DIRECTED BY THE PROBATION OFFICER. HE
15 SHALL NOT OWN, POSSESS, OR CONTROL ANY FIREARM, DANGEROUS
16 WEAPON, OR OTHER DESTRUCTIVE DEVICE. HE SHALL SUBMIT TO A
17 SEARCH OF HIS PERSON, PROPERTY, OR RESIDENCE, AND WARN OTHER
18 RESIDENTS THAT THE PREMISES MAY BE SEARCHED.

19 HE SHALL PARTICIPATE IN A DRUG AND ALCOHOL
20 TREATMENT PROGRAM. HE SHALL PARTICIPATE IN THE SEX OFFENDER
21 TREATMENT PROGRAM. AND HE SHALL NOT HAVE ACCESS OR HAVE
22 ACCESS TO THE INTERNET OR ANY OTHER FUTURE DEVELOPED
23 INTERNET-LIKE ELECTRONIC OR TECHNOLOGICAL MEANS OF ACCESSING
24 INFORMATION USING A COMPUTER OR OTHER DEVICE OR MEANS EXCEPT
25 AS MAY BE ALLOWED AND ONLY UNDER THE SUPERVISION AND

1 CONDITIONS THAT ARE PRESCRIBED BY THE PROBATION OFFICER.

2 THE DEFENDANT SHALL, AT THE REQUEST OF THE
3 PROBATION OFFICER, GRANT THE PROBATION OFFICER ACCESS TO ANY
4 COMPUTER OR FUTURE DEVELOPED, OTHER FUTURE DEVELOPED,
5 ELECTRONIC OR TECHNOLOGICAL DEVICE THAT THE DEFENDANT OWNS,
6 CONTROLS, OR USES, OR THAT IS CAPABLE OF ACCESSING THE
7 INTERNET, OR OTHER ELECTRONIC OR TECHNOLOGICAL MEANS OF
8 ACCESSING INFORMATION. THE DEFENDANT SHALL REGISTER AS A
9 CONVICTED SEX OFFENDER AS REQUIRED BY LAW.

10 AND THE COURT WANTS THE RECORD TO REFLECT THAT THE
11 COURT HAS CAREFULLY CONSIDERED ALL OF THE SENTENCING FACTORS
12 SET FORTH IN TITLE 18 UNITED STATES CODE SECTION 3553(A) IN
13 ARRIVING AT THIS SENTENCE, AND THE COURT FEELS IT IS A JUST,
14 FAIR, AND REASONABLE SENTENCE UNDER ALL OF THE CIRCUMSTANCES
15 OF THE CASE.

16 THE CLERK: DID YOU MEAN \$1,000 RATHER THAN
17 10,000?

18 THE COURT: I MEANT \$1,000. DID I SAY 10,000
19 AGAIN? I MEANT A THOUSAND.

20 I WOULD AKIL, DOES YOUR CLIENT WANT ME TO
21 DESIGNATE HIM FOR HOUSTON

22 MR. SECRET: TEXAS. YES.

23 THE COURT: AS CLOSE TO HOUSTON, I WOULD THINK,
24 FROM WHAT I KNOW.

25 MR. SECRET: YES, SIR. AND WE WOULD ASK FOR

1 VOLUNTARY SURRENDER, YOUR HONOR.

2 THE COURT: NO OBJECTION BY THE GOVERNMENT TO
3 THAT, IS THERE?

4 MS. STEINBERG: NO.

5 THE COURT: HE WILL BE ALLOWED TO VOLUNTARILY
6 SURRENDER. THAT IS FINE. LET'S SEE, THE DEFENDANT HAS
7 WAIVED HIS APPEAL RIGHTS, BUT I WILL GO AHEAD AND STATE ON
8 THE RECORD TO THE EXTENT HE HAS ANY APPEAL RIGHTS REMAINING,
9 HE CAN ASSERT THOSE ONLY BY FILING A WRITTEN NOTICE OF
10 APPEAL IN OUR CLERK'S OFFICE WITHIN 14 DAYS OF THE ENTRY OF
11 JUDGMENT IN THE CASE, AND FAILING WHICH ANY APPEAL RIGHTS HE
12 HAS WILL BE FOREVER WAIVED. DOES THE UNITED STATES TAKE
13 EXCEPTION TO THE SENTENCE?

14 MS. STEINBERG: NO, SIR.

15 THE COURT: DOES THE DEFENDANT TAKE EXCEPTION?

16 MR. SECRET: NO, YOUR HONOR, OTHER THAN THOSE
17 PREVIOUSLY STATED.

18 THE COURT: OKAY WE'LL BE IN RECESS.

19 (END OF HEARING AT 10:45 A.M.)

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REPORTER'S CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

LORI BURGESS
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

DATE: DECEMBER 28, 2016

U.S. DISTRICT COURT
LORI BURGESS, RMR